IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 54 OF 2007.

Hemraj Khushalchand Bhandari,
aged 65 years, Occ.: Business,
residing at CTS No.1105/6, Model
Colony, Shvaji Nagar, Pune 411 016. ... Applicant.

Versus.

Dnyaneshwar Narayanrao Chavan,
Aged 69 years, Occ.: Buasiness,
residig at 335, Shivajinagar,
Pune 411 030. ... Respondent.

Shri G.S.Godbole i/by Shri N.N.Vaishnava for the Applicant.

Shri S.M.Kamble for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2007.

P.C.:

1. Submissions of the learned Counsel appearing for the parties were heard on the last date. The subject matter of this Revision Application is the premises admeasuring 700 sq.ft. situated at Shanivar Peth, Pune. The Respondent filed a suit for possession against the Revision Application, who is the tenant of the suit premises. The suit was contested by the Applicant by filing his written statement. The learned trial Judge decreed the suit filed by the Respondent. The decree has been confirmed in Appeal.

2. In the demand notice issued to the Applicant,

the Respondent has alleged that initially the suit premises were let out to the predecessor of the Revision Application at a monthly rent of Rs.140/-. It was stated that as the Applicant has acquired tenancy rights on the basis of document dated 27th July 1979, the Applicant was liable to pay Rs.140/- plus Rs.35/- per month as rent and Rs.8.10 per month as taxes. It was stated in the notice that from 1st August 1979 to the end of September 2001 the Applicant had not paid the rent at the aforesaid rate. It was stated that after deducting a sum of Rs.140/- per month paid by the Applicant, a sum of Rs.9105/- was due and payable by the Applicant.

3. A reply was issued to the said notice by the Advocate for the Applicant. In the reply, it was stated that the Applicant has paid the rent at the rate of Rs.140/- per month together with taxes thereon and therefore, the Applicant was not liable to pay the amount as demanded by the notice issued by the Respondent-landlord.

4. As stated earlier, the trial Court decreed the suit and the decree has been confirmed in appeal.

5. The learned Counsel appearing for the Applicant submitted that the demand for the sum of Rs.35/- per

month was a non-existing demand which was not covered by any of the provisions of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as the said Act of 1947) including section 10A of the said Act of 1947. He, therefore, submitted that on the face of it, the Applicant was not liable to pay the said amount. There could not have been a decree for possession as the demand made in the notice was patently illegal. He submitted that the suit for possession on the ground of default was not maintainable on the basis of the said notice as in fact on the date of the notice, the Applicant was not liable to pay the amount which was demanded by the notice. He placed reliance on various decisions including the decision of the learned Single Judge of this Court in the case of Shantilal Mistrilal Chhajed v/s. Sadashiv Murlidhar Ratnaparkhi (1990(1) All India Rent Control Journal, page 29). He also placed reliance on the decision of the Apex Court in the case of Smt.Chander Kali Bai and others v/s. Shri Jagidsh Singh Thakur (1978(1) All India Rent Control Journal, page 17). He lastly placed reliance on the decision of the apex Court in the case of Chimanlal v/s. Mishrilal (AIR 1985 SC page 136).

6. It will be necessary to refer to the findings recorded by the Appellate Court on this aspect. The Appellate Court held that the Applicant did not file an

application for fixation of the standard rent within the time prescribed by law. The Appellate Court held that the Respondent was justified in invoking section 10A of the said Act of 1947. The Appellate Court held that the Applicant did not comply with the demand made by the notice and did not deposit the amount in the Court as per the demand.

7. On a perusal of the demand notice on the basis of which the suit was filed, it is obvious that the demand made was for a sum of Rs.35/- per month in addition to Rs.140/- by way of rent and Rs.8.10 per month by way of taxes. Only the demand for the sum of Rs.35/- per month was disputed by sending a reply. It is an admitted position that an application for fixation of standard rent was not filed by the Applicant. In my view the Courts below were justified in passing the decree for eviction. The dispute regarding the payment of Rs.35/- per month as demanded by the Respondent could have been raised by the Applicant only by filing an application for fixation of standard rent. The Applicant is a defaulter as held by the Courts below. In any event, the Applicant did not comply with the requirement of law for availing benefit of relief against forfeiture. It is difficult to find fault with the impugned Judgments and decrees passed by the Courts below. There is no merit in the Revision Application.

The same is rejected.

8. At this stage, the learned Counsel appearing for the Applicant states that the ad-interim order passed by this Court on 28th March 2007 be extended for a reasonable time. Considering the facts and circumstances of the case, the decree for possession shall not be executed till 31st August 2007, subject to condition of the Applicant filing an undertaking in this Court within a period of four weeks from today stating therein that he will not create any third party interests in respect of the suit premises and he will not part with possession of the suit premises.

Judge.